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SEPTEMBER MEETING, 1883.

The monthly meetings, which had been discontinued during the summer, were resumed on Thursday, the 13th instant. In the absence of other officers, Mr. DEANE, Vice-President, occupied the chair. In opening the meeting he congratulated the Society that the vacation had passed without the loss of a single name from either the resident or honorary roll of members.

The Recording Secretary read the report of the last meeting, and it was accepted.

The Librarian announced the accessions to the Library.

The Corresponding Secretary communicated a plan for the preparation of an official history of the United States, in commemoration of the completion of the first century of the government under the Constitution. To carry out this plan, a bill was introduced into the Senate of the United States which provided that such a Centennial History should be published by the government at an expense not exceeding one hundred thousand dollars. The bill was referred to the Committee on Education and Labor, and on March 2, 1883, they reported it back without recommendation, but with a statement in its support which had been read before them by Dr. Franklin B. Hough. This gentleman now wrote to the Massachusetts Historical Society, requesting them to take the matter into consideration, and, if they approved, to express their approbation in such terms as they might deem proper for submission to a committee of Congress before whom the subject may come at its next session. The papers were referred to Messrs. Hill, Green, and Chamberlain, for their judgment and report.

Dr. GREEN called attention to a volume which had been bought from the Savage Fund, which was entitled "Letters from General Washington to General Heath." It appeared to be an original work; but it was, in fact, a copy of the Heath Papers, which were published in the fourth volume of the fifth series of the Society's Collections, with a new title-page, and engravings of Washington and Heath inserted.

The Chairman introduced the subjoined letter from the Hon. Peleg W. Chandler:—

BRUNSWICK, MAINE, Aug. 24, 1883.

CHARLES DEANE, Esq., LL.D.

MY DEAR SIR, — Your favor of the 9th inst. reached me at my summer residence here when I was pressed with so many engagements that I could not give it immediate attention. It is only this day that I have found time to consider the subject of your note, and will now give you in brief my impressions.

You remind me that I once wrote about the witch-trials at Salem, and that I said, as well as Emory Washburn in his "Judicial History of Massachusetts," that the court established by Governor Phips — the Oyer and Terminer for the trial of the accused — was illegal. You say that Mr. A. C. Goodell read a paper at the last meeting of the Historical Society, in which he takes the ground that Phips and his council had full authority by the charter to issue the writ for the Oyer and Terminer. You say that you had some question about it, which you presented to Mr. Goodell afterwards, and to which he has replied in some letters which you send me to read.

If it were proper, I should be tempted to plead the statute of limitations for any error in a statement made by me more than forty years ago, and which has never been questioned until recently, so far as I know. But I suppose the legal maxim, *nullum tempus occurrit regi*, is applicable to all historic and literary works, and an author may at any time be called on to defend them if living, or to suffer in reputation if dead.

You do not send me the paper read by Mr. Goodell to the Historical Society, which I regret, although I gather from his letters the scope of his ingenious argument.*

Governor Phips, in erecting a tribunal at Salem in 1692, professed to act under the authority of the second charter. That instrument provides (1) for the erection of legal tribunals, and (2) for the appointment of judges and other officers of the courts.

The Great and General Court, it says, "shall forever have full power and authority to erect and constitute judicatories and courts of record or other courts . . . for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes, and things whatsoever, arising or happening within our said province or territory; or between persons inhabiting or residing there, whether the same be criminal or civil, and whether the said crimes be capital or not capital."

It would be difficult to construct a sentence giving more complete authority in the premises or more effectually excluding the conclusion that any power in this respect was intended to be conferred upon anybody else, unless the same were plainly expressed in the form of some limitation or reservation.

* Mr. Goodell's argument, relating to the Oyer and Terminer Court of 1692, was only briefly stated in his paper as read before the Society at the June meeting, but was brought out in his subsequent letters to Mr. Deane here referred to. Mr. Goodell has more fully elaborated the subject in the preceding pages. — Eds.

Then, secondly, as to the *officers of these tribunals*, the charter provides that "it shall and may be lawful for the said governor, with the advice and consent of the council, from time to time to nominate and appoint judges, commissioners of oyer and terminer, sheriffs, provosts, marshals, justices of the peace, and other officers to our council and courts of justice belonging." Certainly it would be hard to express more concisely and clearly the duties of the Great and General Court to erect tribunals of justice, civil and criminal, and of the Governor and Council to appoint the necessary officers to carry on the machinery of these courts.

Now, Governor Phips undertook to erect a tribunal called Oyer and Terminer for the witchcraft business, and also to appoint the judges or commissioners. To be sure, this was all done in one writ or order; but this makes it none the less a violation of the charter, the clear intent of which was to keep the powers and duties entirely separate of establishing courts and of appointing judges.

Mr. Goodell's discussion of the phrase "Oyer and Terminer" strikes me as more ingenious than sound. The term has been variously used, but in general means a class of courts of original criminal jurisdiction of the highest sort. "In English practice, a Commission of Oyer and Terminer is a commission under the king's great seal, directed to certain persons among whom two common-law judges are usually appointed, empowering them to hear and determine treasons, felonies, robberies, murders, and criminal offences in general."

This the king could do in one writ or commission, but he never gave any such authority to the governor of Massachusetts, and none such could be inferred. This doctrine is maintained by the ablest writers on the subject. Hutchinson—a man of enlarged and liberal views, thoroughly conservative but eminently fair and judicial, who wrote about seventy years after these events, and who had been himself at the head of the judiciary—expresses himself with characteristic caution, but leaves no doubt as to his opinion. Dr. Palfrey is very emphatic upon the point; and the same may be said of Emory Washburn, who was undoubtedly more thoroughly imbued with the spirit of colonial legislation and more completely understood the legal history of the Commonwealth than any man of the age. The same ground is taken by Hildreth, Bancroft, and notably by President Quincy in his "History of Harvard University." It is also a significant fact that the special tribunal at Salem was swept away by an Act of the General Court constituting a regular tribunal of supreme jurisdiction, of which Stoughton himself was made the chief justice and lost his temper at an early session because he could not influence that court as he had the previous one.

The precise phraseology of this Act I cannot give, but am quite certain that its effect was as above expressed, although I believe the governor, who was alarmed at the proceedings of his own tribunal, asserted that he abolished that court himself. If he had authority to create the tribunal, how could the Great and General Court destroy it, even indirectly? No one will deny that the act of the Great and

General Court in erecting a tribunal having jurisdiction of witchcraft and other criminal offences was authorized by the charter. But if the governor might also create a court for the trial of "all manner of crimes and offences" in the county of Essex, and call it "Commissioners of Oyer and Terminer," it might have led to a direct conflict of authority in a matter of the utmost importance. Certainly such a power might have been so exercised as to completely nullify the authority and duty of the Great and General Court "to erect and constitute judicatories and courts of record and other courts" for the trial of "all manner of crimes, offences, pleas, processes, complaints, actions, matters, causes, and things whatsoever." The charter, as it seems to me, is liable to no such criticism.

In regard to these witchcraft proceedings two things ought always to be kept in mind. First, that the people of Massachusetts were in no way responsible for the Oyer and Terminer proceedings. The commissioners were set at work by a governor appointed by the king, — a dull and narrow man who was greatly under the meanest influences, and was especially controlled by the master spirit of evil and hate whom he created chief justice. Secondly, this tribunal was entirely composed of laymen; not a lawyer was upon the bench. Its proceedings were absurd and outrageous throughout. All sensible rules of evidence were ignored. There never were in any community, where the English common law was the citizen's birthright, such cruel and wanton violations of right, such absolute denials of justice, as at Salem in 1692. The witch-trials in England were bad enough, but there was nothing like ours in this fatal year. The chief justice, and chief prosecutor as well in this horrible business, was educated as a clergyman. He was narrow, hard, cruel, and able. "Terrible as" the literal "hell" in which he fully believed, he never repented; and while the comparatively insignificant and gentler Sewall publicly confessed his fault, and during all his remaining life humbly sought forgiveness for the part he took in this business; while the jurors signed and circulated a humble and solemn declaration of regret for the part they had borne in these trials; and while the government of the province felt, with the people, that the anger of a just God was upon them, and a proclamation was issued for a fast on the 14th of January, 1796, — Stoughton braved it out to the last. Earnest men have sometimes had a certain satisfaction in the feeling, that, if the future sulphurous state in which he believed does exist, *he has found it*, and is more comfortable there than he would be anywhere else in the universe of a just and merciful God.

The portrait of this man adorns the walls of the University, and one of the most conspicuous halls is called after his name. Is it the only instance in which it would be well to hang out a sign with the significant words, — *PECUNIA NON OLET?*

I am, my dear Sir,

Faithfully yours,

P. W. CHANDLER.

After the reading of this letter, Mr. GOODELL, having been called upon, remarked that he was not unconscious of his temerity — if he might describe it by so strong a word — in venturing to question the opinion which had been so authoritatively and unanimously given by those who are recognized as the best authorities upon the question of the legality of the Court of Oyer and Terminer of 1692.

The letter of the distinguished lawyer which has just been read contains all the argument that has been offered in support of the prevailing view; and yet it leaves untouched several important points which seem conclusive against that opinion. For instance, to begin with the last objection, that if, by the charter, the Court of Oyer and Terminer could be established by the governor with the advice of the council and be abolished by the General Court, there was an irreconcilable conflict of functions in two of the departments of government. This difficulty, however, is entirely removed, when we remember that in England commissions of oyer and terminer are suspended or superseded whenever the regular assizes are held within the same county, and that, by analogy, the sessions of the Superior Court of Judicature, Court of Assize and General Gaol Delivery, here, would undoubtedly have the same effect, since the act establishing that court conferred upon it all the authority of the King's Bench in England. Mr. Goodell called attention to the fact that justices of the peace were appointed by the governor with the advice of the council, without the co-operation of the legislature; and yet these magistrates had high judicial powers, either singly or in their sessions, and their tribunals were among the most ancient courts of record. Now, if the concurrence of the legislature was necessary to give these magistrates judicial powers, their commissions alone were mere blanks, and their offices only a name, which cannot for a moment be supposed.

Mr. Goodell concluded by saying that he knew of no reason why commissions of oyer and terminer might not have been issued at any time during the provincial period; that they were, in fact, issued as late as 1746, and that the legislature never interfered or co-operated except when it was necessary to give the commissioners jurisdiction over offences not cognizable by them at the common law, or by the letter of the charter; and that even in these instances the act of the legislature was a mere *fiat* to the executive, to proceed in the extraordinary emergency provided for as in the case of an ordinary and regular proceeding. He asked how the *fiat* of

the legislature could add any force to the express authority of the charter? or how the General Court, if it had the exclusive power claimed for it, could in any emergency delegate to the governor and council its constitutional authority, without an infraction of the charter?

These and other considerations, as would appear in the report of his remarks at the June meeting, obliged him to declare that he was not convinced that the court was illegal; but on the contrary he found no difficulty either in the language of the charter or in the principles of the common law and practice in England, from time immemorial, in coming to the opposite conclusion.

Dr. EVERETT stated his belief that Mr. Goodell's view was correct, and that Dr. Palfrey and others had been misled by their warm attachment to republican and American ideas, which led them to see tyrannical encroachments of the executive in acts that were harmless and legitimate. The charter intended, doubtless, to produce a kind of reflection of the English Constitution, — the General Court reflecting Parliament, and the Governor and Council representing the King in Council. Now in the reign of William and Mary the King in Council was expected, as the executive, the government, to do many things that our theories reject as encroaching on popular rights. A king was considered derelict to duty and *fainéant*, who did not really govern. The appointment of special commissioners of oyer and terminer and gaol delivery, when a sudden appearance of high crimes called for special and prompt trials, was a regular and recognized part of the executive authority. Such an extraordinary outbreak of crime was held to have taken place at Salem; it would have been an ordinary constitutional proceeding in England to send down a special commission, by the king's appointment, to hear and determine, and the idea of calling on Parliament to appoint such a court would have been unheard of. Such special commissions have been in use in very recent times, as at the Bristol Riots in 1831, and Frost's trial for high treason in 1840. They are usually, but not necessarily, composed of the judges of the land.

It is a well-known theory of English law that the judges are the king's judges, and dispense justice in his name, as if he himself were in court; and even if the charter gave co-ordinate power to the General Court to appoint the regular tribunals, no publicist of William and Mary's reign could imagine it took away from the king — or his deputy — his

undoubted prerogative of appointing special commissions of oyer and terminer when needed.

The witchcraft trials of 1692 were no harsher or more unfair to the accused than the state trials of Charles II. and James II.'s reign. Chief Justice Holt, the first who broke down the delusion of witchcraft by *dicta* from the bench, was the first to introduce a milder and fairer method in all trials. No one need be troubled about accepting the bounty of Governor Stoughton in the shape of a building, as Old Stoughton Hall was destroyed long ago, and the present building was raised by that most objectionable method, a lottery.

Mr. HILL said that, at Mr. Deane's request, he had examined the papers referred to in Mr. Chandler's letter, and, while not prepared to say that the commission was legal, the question seemed to him to be a more doubtful one than Mr. Chandler regarded it, and that, in the light of English precedents, a strong argument could be made in defence of the legality of Governor Phips's action.

Mr. A. B. ELLIS presented two photographs of John Cotton's pulpit in St. Botolph's Church in Boston, Lincolnshire, England.

Dr. PEABODY read the following paper : —

In 1828 I first became a resident of Portsmouth, New Hampshire, which was virtually my home till 1860, though my residence was intermittent from 1830 to 1833. Among the names with which I early became familiar was that of Hon. John Pickering, who was removed by impeachment from the office of District Judge of the United States Court early in Jefferson's administration, and whose death shortly followed his removal. I was intimate with not a few of his coevals and with very many of his contemporaries. He was always spoken of as not only the foremost man of his State and time as a lawyer and a jurist, but as pre-eminent in all qualities appertaining to a good citizen and a Christian gentleman. I can say with confidence that there was no name of his time held in equal honor with his in the memory of the community. I became acquainted with all of his then surviving children, and with three of them was on terms of close intimacy during the residue of their lives. I heard from them many details of their father's domestic habits and character, indicating a rare "beauty of holiness" in his home relations and intercourse. His successor was living, during the early part of my residence in Portsmouth, in a state of senile

dementia, utterly incapable of duty, yet receiving his full salary. What his merits were I need not say; but he still rested under the stigma and obloquy incurred by his agency in Judge Pickering's removal, and the feeling was much more general than the belief that he was suffering a special retribution for the wrong by which he had come into office. The truth was, that Judge Pickering had become insane some two or three years before his death. The fact of his insanity was as well known and recognized in Portsmouth as that of his existence. His family gave notice of that fact at Washington, and supposed that such a statement was a sufficient answer to the charges made against him of malfeasance in office. Removal from office on political grounds was a new policy, of which there had been but few instances, and none by the process of impeachment. It was then a long way, about twelve days' journey, from Portsmouth to Washington; the making a crime of insanity was not thought of as even possible; and the friends of the venerable victim deemed it unnecessary to send special witnesses in a case so plain, until it was too late to avert the sentence of the Senate. I can assert with absolute certainty that in New Hampshire traditions there was never any other version of the story, or any dissent from the veneration in which Judge Pickering's memory was held by men of all parties.

I was startled not long since by reading in the very admirable Life of Jefferson, by our associate, John T. Morse, Jr., the following statement:—

“His [Jefferson's] first experiment [in reforming the judiciary] was certainly made *in corpore vili*. He sent to the Representatives a special message concerning the shortcomings and vices of Pickering of New Hampshire, Judge of the District Court, a worthless fellow morally and mentally. Pickering was at once impeached before the Senate by order of the House, was found guilty and removed, the Federal Senators doing themselves little credit by voting in favor of so wretched a creature.”

Mr. Morse was certainly justified in his version of the case by the notice of it in Randall's Life of Jefferson, in which, however, there are specifications of misconduct which have no moral or judicial bearing, but are merely such indecorous acts as betoken incipient insanity; and it is expressly stated that “his [Pickering's] son petitioned for a delay, on the ground that his father had been insane for upwards of two years, and still continued so, and that he was too feeble to be brought to Washington.”

Of the case as it actually stood, probably no contemporary testimony can be adduced so thoroughly authentic as that contained in the *Life of William Plumer*, who was in the United States Senate at the time of Pickering's impeachment. His diary and correspondence during the whole of his public life were full, and minute in detail; and his *Life* by his son — as, having compared it with transcripts from the father's papers, I am able to testify — was prepared with the most conscientious fidelity, and, as regards public affairs, is but an abridgment of the father's more copious narrative. This *Memoir* (pp. 272–274) gives the following statement:—

“The House of Representatives had, at the previous session, voted to impeach John Pickering, District Judge of New Hampshire, and the case now came on for trial before the Senate. The hypochondria, as it was called in 1794, of Judge Pickering, had in 1803 been developed into a condition, bodily and mental, which rendered him incompetent to the discharge of his official duties. How to get rid of him was now the question. The Constitution knows no mode of removing a judge except by ‘impeachment for high crimes and misdemeanors.’ That his mental powers were impaired or deranged, no one doubted. The New Hampshire senators were both examined as witnesses, and testified to the high moral worth of the Judge, so long as he retained the use of his reason. Under these circumstances it was with difficulty that a sufficient number of votes could be obtained to convict him. The Federal members were all opposed to the impeachment, and three of the Republicans absented themselves. The final vote was, yeas, 19; nays, 7; and he was accordingly removed. The case was a difficult one, in every aspect. Pickering's removal was desirable; but to make insanity a misdemeanor was to confound all distinctions of law and justice, and to convert the constitutional provision of impeachment for crime into an unconstitutional mode of removal from office without crime, thus changing the tenor of judicial office from ‘good behavior’ to that of the good pleasure of Congress. The success of this impeachment furnished a new proof of the ease with which constitutional provisions are made to yield to the supposed necessities of the public service, and to the interests, often urgent, of party leaders. In this case, it gave the administration an opportunity of rewarding partisan services with the spoils of office. John S. Sherburne, Jonathan Steele, Michael McCleary, and Richard Cutts Shannon were the principal witnesses against Pickering. Sherburne was appointed Judge; Steele, District-Attorney; McCleary, Marshal and Shannon, Clerk of the Court. Steele, expecting to have been Judge, refused to accept his appointment, assigning as the reason his agency in the removal of Pickering.”

It will be seen from this narrative that the witnesses all received their witness-fees; and as for Steele's magnanimity

in declining the proffered judgeship, all that can be said is, that at that period Portsmouth was the seat of a very extensive foreign commerce and great business activity, that the business of the District Court was therefore of large amount, and that the fees of the District-Attorney must have been considerably in advance of the Judge's salary.

As an additional testimonial to the high position and substantial merit of Judge Pickering, I add the following notice of him in the "Annals of Portsmouth," by Nathaniel Adams, who was Clerk of the Superior Court of New Hampshire, or Supreme Court, as it was subsequently called, from its establishment till his death in 1829, and who was second to no man of his time in extent and accuracy of historical knowledge as to his own town and State. Under the year 1805, Mr. Adams writes (pp. 332-334):—

"The Honorable John Pickering, LL.D., died on Thursday, the 13th day of April, in the sixty-eighth year of his age. Mr. Pickering was born in Newington, and was fitted for college by the Rev. Joseph Adams, minister of that place. He was graduated at Harvard College in 1761, and at first turned his attention to divinity, but afterwards applied himself to the study of law. He was admitted to the bar, and opened an office at Greenland, but shortly after removed to this town, and soon distinguished himself as an advocate and counsellor. In his early age he became a professor of religion, and was 'remarkably exemplary in all the walks of private, social, and public life.' The wardens and vestry of Trinity Church, in Boston, invited him to settle there as a colleague with the Rev. Dr. Walter, but he declined accepting the invitation; preferring the profession of the law, in which he was already established. He supposed it would afford him as ample a field for the exercise of his talents, and give him as good an opportunity of promoting the cause of justice and humanity, as he should have in the ministry. He was candid and liberal in his practice, and faithful to his clients. He never refused to espouse the cause of the injured, notwithstanding in many instances he had no prospect of pecuniary reward. Always endeavoring to promote the cause of justice, he was considered an ornament to the bar. Conscious of the rectitude of his own intentions, he was slow to suspect others of being influenced by improper motives. 'His temper was placid, his manners gentle, his disposition kind and benevolent, his habits social. In conversation he was pleasant, instructive, and entertaining, and in his expressions remarkably chaste and elegant.' Although abounding in wit, he never indulged it to excite any unpleasant emotions in the bosoms of his friends. He was an honorary member of the Massachusetts Humane Society, and of the American Academy of Arts and Sciences; and the Government of Dartmouth College conferred on him the degree of Doctor of Laws.

"The confidence placed in him by his fellow-citizens appears by their frequently electing him to some of the most important offices in their power to bestow. He was a delegate from this town to the convention for forming the State Constitution, which was adopted in 1783, and was a very influential member. The public are indebted to him for many important articles in that instrument.

"He was likewise a delegate to the convention of this State, which adopted the Constitution of the United States, in 1788. His eloquence and powers of reasoning probably had great effect in procuring its adoption. For several years he held a seat in the legislature of the State, either as a representative of this town, a counsellor for the county, or senator for the district. In each of these offices his only object was to promote the public good, and his skill in jurisprudence enabled him to discern it. After the adoption of the Federal Constitution, Governor Langdon, who was elected a senator of the United States, resigned his office of Chief Magistrate of the State; Mr. Pickering, as senior senator, presided the remainder of the year. In 1790 he was appointed Chief Justice of the Superior Court of Judicature, which office he held until the year 1795, when he was appointed Judge of the District Court of New Hampshire. His great legal knowledge, his integrity, and eminent abilities, qualified him for these judicial offices. But alas! the most brilliant talents are obscured when reason is dethroned. A few years previous to his decease his rational faculties became impaired, and mental derangement succeeded. While laboring under this afflicting dispensation of Providence, he was removed from office; notwithstanding the principles of law do not hold a person amenable for his conduct when deprived of his reason. 'During his last confinement he had some lucid intervals, and at such times he invariably expressed his firm belief in the Christian religion, the fullest confidence in a future state, and his hope of happiness through the Redeemer.'"

Mr. Morse kindly promises to make the needed correction in the future editions of his book which will undoubtedly be required; but as the readers of the first edition will probably see no other, it seems fitting, and is certainly due to the many descendants of Judge Pickering, that the correction should be made thus early, and placed where it may be permanently accessible.

Dr. EVERETT called attention to the fact that Dr. Peabody's position about Judge Pickering's insanity and the unfairness of his trial was fully substantiated in the Diary of John Quincy Adams, one of the senators who sat upon the impeachment. Mr. Adams writes with regard to it:—

"The most persevering and determined opposition is made against hearing evidence and counsel to prove the man *insane*, — only from the

fear that if the insanity should be proved, he cannot be convicted of *high crimes and misdemeanors* by acts of decisive madness. . . . Mr. Jackson was for hearing none of these pretences of insanity, because they might prevent us from getting rid of the man," (vol. i. p. 299).

Mr. Adams proposed, in a letter to Timothy Pickering, that the minority should refuse to answer the question of *guilty* or *not guilty*, and should offer a statement of reasons for this course, the first of which is the following:—

"Because the allegations contained in the petition of Jacob S. Pickering, son of the said John Pickering, and supported by the depositions of Samuel Tenney, a member of the House of Representatives of the United States, of Ammi Cutter, of Joshua Brackett [physicians of eminence], of Edward St. Loe Livermore, and of George Sullivan [two of the foremost members of the New Hampshire Bar], and further confirmed by circumstances within the personal knowledge of Simeon Olcott and William Plumer, two of us, who deposed to the same in this court, we think there is the highest probability that the said John Pickering was, at the time when the offences alleged in the said articles of impeachment are stated to have been committed, and for some time before, and ever since, has been, and still is, insane, his mind wholly deranged, deprived of the exercise of judgment and the faculties of reason, and as such incapable of committing a crime, and not amenable for his actions to any judicial tribunal," (pp. 305, 306).

Mr. Adams's closing remarks on the case are as follows:—

"On the impeachment of Mr. Pickering there are two remarks which have impressed themselves on my mind with peculiar force,—the subserviency of the Senate, even when acting as a *Judicial Court*, to a few *leading members* of the House of Representatives, and the principle assumed, though not yet openly avowed, that by the tenure of *good behavior* is meant an active, continual, and unerring execution of office. So that insanity, sickness, any trivial error of conduct in a judge, must be construed into misdemeanors, punishable by impeachment," (pp. 309, 310).

Mr. LEE desired to be excused from serving on the committee for publishing a volume of Washington's letters;* and the Chairman spoke of those which are included among the Trumbull Papers, and related the circumstances under which these came into possession of the Society.

The Chairman also communicated the following papers from the State Paper Office in London, relating to the early colonies in New England.

* See vol. xviii. p. 288. — Eds.

State Papers, Colonial, Vol. 2, No. 32. 1623, June 26. (Conway Papers) draft.

Sec. Conway to the Lord President of York.

RIGHT HONORABLE, — I am commanded by his Majesty to acquaint your Lordship with the good judgment his Majesty makes of the undertaking in New England and more particularly of the plantation intended in those parts by his servant M^r Christopher Levett one of the Council for the settling out of that plantation where he hath one design that is generally honorable to the nation, and to the particular County and City of York, intending to build a city and call it by the name of York. This application of his whole design to the particular County of York deserves a particular contribution of favour towards this so notable a good work. His suit is that he might have Adventurers to join with him to set forth fifty men with fifty others that he intends to carry over. And that such as shall be unwilling to adventure may nevertheless be moved to contribute towards the building of a fort which he intends to make for the preservation of those that are to depend upon him, and to secure the plantation. His Majesty's request therefore to your Lordship is that you will employ your industry and your judicious mediation between the gentlemen of that county and M^r Levett. And by all fair persuasions to win from the country some assistance upon such conditions, as may be just and suitable with his reputation; which favour his Majesty will acknowledge as done at his request. And I am glad of this opportunity to do this gentleman a good office, and to present my service to your Lordship with that affection and respect which becomes

Your Lordship's humble servant

EDW. CONWAY.

GREENWICH, 26 June, 1623.

(Indorsed) June 26, 1623.
Lord President of York.

State Papers, Colonial, Vol. 4. Feb. 11, 1628. (Sign Manual, Vol. V. Car. I., No. 1.)

CHARLES R.

Charles by the grace of God King of England, Scotland, France and Ireland defender of the faith &c.

To all to whom these presents shall come Greeting:

Whereas we have been informed that in respect of the differences between us and the Kings of Spain and France, divers of our loving subjects as well such as are adventurers in the plantation of New England, in America, as such as are well inclined to become adventurers there, are so much deterred and discouraged both from proceeding with what is begun and what is by them intended, that except some special care be now taken, and some present means raised for the securing of the fishing there, and the safety of those coasts from foreign enemies, they which have already adventured in that plantation are likely to

withdraw their estates and people from time to time and those that happily may desire to adventure themselves and fortunes in the same are by this means altogether discouraged and disabled to proceed in their intention. And whereas our many urgent occasions do at this present so far engage us for the necessary defence of these our realms and dominions as we cannot in due time give any assistance, or provide for the securing of those remote parts with such succour and relief as may prove requisite in a case of that importance, whereby that plantation so happily begun and likely to prove so advantageous and profitable to us and our subjects in regard of the many commodities and merchandize thence to be had, and the store of timber there growing, very necessary for the provision of shipping for the defence of our kingdoms, is likely to be utterly lost and abandoned to the dishonour of us and our nation and the advantage and encouragement of our enemies. And whereas we have been informed that our well beloved subject Captain Christopher Levett, being one of the Council for the said plantation, and well knowing the said country and the harbours of the same, and the strength and disposition of the Indians inhabiting in that country, hath undertaken and offered to add unto his former adventure there all his estate, and to go in person thither, and by God's assistance either to secure the planters from enemies, keep the possession of the said country on our behalf and secure the fishing for our English ships or else to expose his life and means to the uttermost peril in that service, upon which his generous and free offer we have thought fit, by the advice of our privy Council, and appointed him to be governor for us in those parts. And because the charge in preparing, furnishing and setting forth of ships for the service at the first will be very great so as without the help and assistance of others (well wishers of those plantations) these designs cannot be so well accomplished as we desire; now know ye that we out of the love and affection which we bear to works of this nature and especially for the propagation of the true religion which by this means may be effected by converting those ignorant people to Christianity, have thought fit by the advice of our Privy Council to commend this so pious a work to the consideration and assistance of all our loving and well disposed subjects, not doubting but they (well weighing the necessity of this work and considering the present troubles of these times) will be ready and willing to yield such assistance to the same by their voluntary contribution, towards the effecting thereof, as may in some measure help to defray the present charge now to be dispended for the accomplishing thereof for the honour and safety of this kingdom and the upholding of the said plantation;

Wherefore our will and pleasure is and we do by these presents will require and command all and singular Archbishops, Bishops, Archdeacons and Deans, within their several dioceses and jurisdictions, that forthwith upon sight of these our letters patents they command and cause the same or the true brief thereof to be read and published in all the several parish churches of and within their several dioceses precincts and jurisdictions, and that the churchwardens of every several

parish shall gather and collect all such sum and sums of money as shall be freely and voluntarily given and contributed to the purposes aforesaid, and the same being gathered and collected, forthwith to pay and deliver over unto the said Captain Christopher Levett or to such person or persons as shall be by him in writing under his hand and seal thereunto authorised and appointed, whom we do think most fit in regard of his said employment to be trusted with the disposing of the same. In witness whereof we have caused these our letters to be made patents for the space of one whole year next ensueing the date of these presents to endure. Witness &c.

May it please your most excellent Majesty :

This containeth your Majesty's grant for a general and free contribution to be collected of such of your Majesty's subjects as shall be thereunto willing for the maintenance of the plantation of New England, and to be paid to Captain Christopher Levett whom your Majesty is pleased to trust therewith in respect of your Majesty's resolution to appoint him governor there.

And is done by order from the Council Board signified by S^r William Beecher.

R. HEATH.
Ex per R. HEATH.

(Indorsed) February 1627
Exp^r apud Westm^r undecimo die
Februarij, Anno R. R. Caroli tercio
J. WOODWARD
Dep^t Maij

A new serial number of the Proceedings was laid upon the table by the Recording Secretary at this meeting.